

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-0961
Facsimile (702) 949-8321
Telephone (702) 949-8320

40 North Central Avenue, Suite 1900
Phoenix, Arizona 85004-4429
Facsimile (602) 734-3824
Telephone (602) 262-5311

Susan M. Freeman AZ State Bar No. 004199
Email: sfreeman@lrlaw.com
Rob Charles NV State Bar No. 0065934
Email: rcharles@lrlaw.com

Attorneys for Official Unsecured Creditors' Committee for USA
Commercial Mortgage Company

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company
06-10725 – Lead Case

USA Capital Realty Advisors, LLC
06-10726

USA Capital Diversified Trust Deed Fund,
LLC
06-10728

USA Capital First Trust Deed Fund, LLC
06-10728

USA Securities, LLC
06-10729

Debtors.

Jointly Administered

Chapter 11 Cases

Judge Linda B. Rieggle Presiding

Notice of Continuing Objection To
Motion For Payment Of Proceeds Of
Notes Secured By Deeds Of Trust
Without Reduction For Netting

Date: August 31, 2006

Time: 9:30 a.m.

Affecting:

.. All Cases

or Only:

× USA Commercial Mortgage Company

.. USA Capital Realty Advisors, LLC

× USA Capital Diversified Trust Deed Fund,
LLC

× USA Capital First Trust Deed Fund, LLC

.. USA Securities, LLC

The Official Unsecured Creditors' Committee for USA Commercial Mortgage Company opposes the request for continuing authority to make payments as requested in the Debtors' Motion To Distribute Funds And To Grant Ordinary Course Releases And Distribute Proceeds (the "Distribution Motion") [DE 847] for the reasons stated in the Committee's Response to Motion to Distribute Funds and to Grant Ordinary-Course



1 Releases and Distribute Proceeds [DE 995], which was supported by the Declaration of
 2 Edward M. Burr [DE 996]. The Committee is not waiving the substantive arguments
 3 previously made and considered by this Court, rather this opposition notes that Debtors
 4 still have not proposed any means of withholding sums that should be withheld under any
 5 reasonable view of Lenders' rights *vis a vis* the servicing agent.

6 Specifically, each of the following issues was raised in the Committee's Response
 7 and has not been addressed by Debtors as of this writing:

8 • Mesirow Interim Financial Management LLC ("Mesirow") should determine
 9 and USA Commercial Mortgage Company ("USACM") as servicing agent hold back from
 10 the appropriate Lenders a 3% servicing fee where the applicable Loan Servicing
 11 Agreement ("LSA") so provides. Conversely, a Lender whose fee is 1% should not have
 12 additional servicing fees withheld because Mesirow has not yet analyzed this issue.

13 • Mesirow should allocate the costs of the Hilco appraisals on a loan-by-loan
 14 basis and USACM should deduct those costs before distributions are made.

15 • The fees and expenses of Debtors' professionals incurred in collecting Loans
 16 must be addressed. Neither Borrowers nor Lenders should get a free ride at the expense of
 17 USACM's unsecured creditors for such expenses.¹

18 • The fees and expenses associated with the Direct Lenders Committee must
 19 be addressed. Just as the USA Capital Diversified Trust Deed Fund, LLC and USA
 20 Capital First Trust Deed Fund, LLC estates are paying the expenses of the professionals
 21 representing their respective interests, so too must the Direct Lenders, not the unsecured
 22 creditors of USACM.

23
 24
 25 ¹ There can be no argument that USACM's professionals must keep their time and expense
 26 and Debtors must seek to recover expense incurred in collecting Loans from Borrowers in
 default. If the professionals keep the time and expense, and USACM collects those fees
 from the Borrowers, then the fees are kept by USACM and the Lenders need not be
 charged.



1 Mesirow and Debtors have known about these issues at least since the Committee
 2 filed its Response. The issues have not been resolved as of this writing, although the
 3 Committee has made a written proposal.

4 Accordingly, the Committee requests that the request to make additional
 5 distributions be continued until Debtors resolve the foregoing concerns. A brief
 6 continuance should not impose any hardship on Lenders as Mesirow has not, as of this
 7 writing, identified the distribution it proposes to make for July collections.² (Mesirow did
 8 not circulate the Loan Status Report for July collections until August 23, 2006.) The
 9 continued hearing could perhaps occur as soon as the hearing presently scheduled for
 10 September 13, 2006.

11 Dated August 24, 2006.

12 **LEWIS AND ROCA LLP**

13
 14 By /s/ RC (#006593)

Susan M. Freeman, AZ 4199 (pro hac vice)

Rob Charles, NV 6593

16 *Attorneys for Official Unsecured Creditors' Committee*
 17 *for USA Commercial Mortgage Company*

18
 19
 20
 21
 22
 23
 24
 25
 26 ² The Committee reserves the right to object to any distribution when Mesirow provides its
 accounting of a proposed distribution.